



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/156345

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services (DHS) correctly modified Petitioner's request for Personal Care Worker (PCW) service hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On January 16, 2014, Golden Path Home Care, Inc. (Golden Path) submitted, on behalf of Petitioner, a request for prior authorization of PCW hours for 53 weeks at a cost of \$207,760.00. (Exhibit 2 – Attachment 1)
3. On February 24, 2013, DHS provided notice to the Petitioner and Golden Path, that the request for services was modified. (Exhibit 1)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 26, 2014. (Exhibit 1) The appeal letter was penned by Petitioner's son, who is also his PCW. (Testimony of Petitioner and Petitioner's son)
5. Petitioner is 68 years old and suffers from stage 3 chronic kidney disease and diabetes. In addition, Petitioner has issues with COPD, chronic back pain and cramps in his hands. (Exhibit 2, attachment 1)
6. Petitioner does not live alone. (Exhibit 2, attachment 5)

### **DISCUSSION**

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

*Wis. Admin. Code § DHS107.02(3)(b)*

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;

10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Golden Path, on behalf of Petitioner, requested 42 hours per week of active PCW service hours and 7 hours per week travel time for the PCW.

According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved the 7 hours per week of travel time for the PCW, allowed 24 hours of PCW service to be used as needed over 53 weeks for doctor’s appointment, etc., but modified the request for active PCW service hours from 42 hours per week to 19 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Golden Path, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165.

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This chart can also be found at the aforementioned website. A copy of the table was included as attachment 6 of the OIG letter, Exhibit 2.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*.

### Bathing

DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table:

30 minutes per day x 7 days a week = 210 minutes per week

### Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

The DHS allowed the maximum amount of time permitted for the second episode of dressing, upper and lower body:

20 minutes per day x 7 days a week = 140 minutes per week

In addition, DHS allowed the maximum time permitted for placement of an Aspen back brace:

10 minutes per day x 7 days a week = 70 minutes per week.

### Grooming

The personal care screening tool, indicates that the Petitioner needs assistance at level “D” for grooming. (Exhibit 2, attachment 5) DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table:

5 minutes per episode x 2 episodes per day x 7 days a week = 70 minutes per week

### Eating

It is undisputed that the Petitioner is independent with eating and is able to feed himself.

### Mobility

The PCST indicated that the Petitioner needs assistance at level C, stating that the Petitioner, “moves self about with constant supervision and physical intervention to ensure task completion”, that the Petitioner uses a walker, has an unsteady gait and loses his balance. (Exhibit 2, attachment 5)

DHS disagreed with the assistance level, opining that the Petitioner should not need physical intervention, if he has a walker, since the walker is intended to help the Petitioner compensate for any balance issues.

At the hearing, the Petitioner testified that he does use a cane and walker, but he needs help getting the walker and he tires easily. The Petitioner's son, who is also his PCW, indicated that the Petitioner is currently without a walker and is waiting for a new one to be delivered. The Petitioner's son further testified that the Petitioner is able to use a cane to ambulate when the son is not there. The Petitioner's son also expressed concerns about the Petitioner's safety when moving about the house, because the Petitioner tends to lean over a lot and has fallen "a couple of times" this past winter.

Given that the Petitioner presents a risk of falling, even with his assistive devices, it is not unreasonable to expect the PCW to physically intervene, at least some of the time, to make sure the Petitioner safely completes the task. As such, it is found that Golden Path correctly assessed the Petitioner at level C.

The Personal Care Activity Time Allocation Table allows for 20 minutes of assistance, per day, for individuals who require assistance at level C. As such, the time allowed for Petitioner should be:

20 minutes per day x 7 days a week = 140 minutes per week.

#### Toileting

The PCST indicated that the Petitioner needs assistance at level C, four times per day because the Petitioner is able to toilet himself and provide incontinence care, but needs assistance getting off of the toilet. This is consistent with the Petitioner's testimony that he needs assistance getting on and off the toilet. The Petitioner also indicated that he sometimes needs help getting cleaning-up.

DHS allowed the maximum time for this task:

10 minutes per episode x 4 episodes per day x 7 days a week = 280 minutes per week.

The Petitioner's son indicated that the Petitioner experiences incontinence one to two times per week and needs assistance getting changed / cleaned up. For that, one can allow:

15 minutes per episode x 2 episodes per week = 30 minutes per week

Total time = 310 minutes per week

#### Transfers

DHS did not dispute the need for time for this task and allowed the maximum time permitted:

30 minutes per day x 7 days a week = 210 minutes per week

#### Medically Oriented Tasks

DHS did not dispute information in the PCST indicating that the Petitioner needs assistance checking his glucometer readings and applying prescription skin cream. Thus, DHS allowed the maximum time permitted:

For the glucometer:

5 minutes per episode x 3 times per day x 7 days a week = 105 minutes per week

For prescription skin cream:

5 minutes per episode x 2 times per day x 7 days a week = 70 minutes per week.

The Petitioner's son indicated that he provides an additional service by massaging his father during lotion applications. However, there is no physician's order for therapeutic massage. As such, PCW time cannot be allowed for that. See Wis. Admin. Code §DHS 107.112(1)(a) and Wis. Admin. Code §DHS 107.112(4)(c)

The actual time needed to complete Petitioner's ADLs and MOTs is as follows:

1. Bathing;	210 minutes per week
2. Dressing	140 minutes per week
3. Brace Application	70 minutes per week
4. Grooming	70 minutes per week
5. Eating	Zero
6. Mobility	140 minutes per week
7. Toileting	310 minutes per week
8. Transfers	210 minutes per week
9. MOTs	175 minutes per week
	-----
	1325 minutes per week

Incidental Tasks

The PCST indicated that the PCW will be providing services incidental to ADLs. (Exhibit 2, attachment 5)

Per the on-line Provider Handbook, topic 3167, for individuals who do not live alone, time equal to ¼ of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One fourth of 1325 minutes is 331.25 minutes.

Totaling all of the time allowable for Petitioner we have:

1325 minutes per week for ALDs  
331.25 minutes per week for incidental activities

-----  
1656.25 minutes per week ÷ 60 = 27.60 hours per week or 110.4 units

The Petitioner was hoping to have the 42 hours per week approved. However, the time allotted should be sufficient, because as stated above, in addition to the 27.60 hours per week that I am approving, DHS has already approved 7 hours per week for travel time and an additional 24 hours per year to be used as needed.

If over the course of the year, the Petitioner requires more PCW services, Golden Path can submit to DHS a request to amend the prior authorization request to add more time.

**I note to the petitioner that his provider, Golden Path, will not receive a copy of this Decision. In order to have these services approved, the petitioner must provide a copy of this Decision to Golden Path, who must**

**then submit a *new* prior authorization request to receive the approved coverage.**

### **CONCLUSIONS OF LAW**

DHS did not correctly modify Petitioner's request for PCW hours.

**THEREFORE, it is**

### **ORDERED**

That Golden Path, Inc. is approved to receive payment / reimbursement for 27.60 hours / 110.4 hours per week of active PCW service hours.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

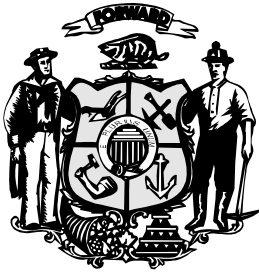
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of July, 2014.

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 3, 2014.

Division of Health Care Access and Accountability